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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 28th March, 2019
Judgement pronounced on: 10th April, 2019

+ **CRL.P. 95/2018**

STATE (GOVT.OF NCT OF DELHI)

....Petitioner

Through: Mr. Rajat Katyal, APP for State
with SI Vidyakar Pathak, PS
Kamla Market.

Versus

RAM CHAND

....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By the present Leave Petition filed under Section 378(1) of the Code of Criminal Procedure, (hereinafter referred as Cr.P.C.) the State seeks leave to appeal against the judgment dated 02.11.2017 passed by the learned Trial Court in FIR No. 132/2004, registered at PS, Kamla Market whereby the accused was acquitted of the charge punishable under Sections 279/304A of the Indian Penal Code (hereinafter referred as IPC).
2. Brief facts of the case, as noticed by the Learned Trial Court, are as under:-

“The case of prosecution against the accused Ran Chand is that on 04.04.2004 at about 4pm at JLN Marg, near Bus Stand, Kamla Market, Delhi,

within the jurisdiction of PS Kamla Market, he was found driving Ashok Lee Land Truck 709 bearing registration no HR-38C-2513 (hereinafter as 'offending vehicle') in a rash or negligent manner and while so driving dashed against a rickshaw thela being driven by deceased Ram Baran Yadav and caused his death."

3. After completing the investigation, a charge sheet was filed. The accused was charged with offence under Sections 279/304A of IPC to which he pleaded not guilty and claimed to be tried. The prosecution in order to bring home the guilt of the accused, examined as many as of 13 witnesses including an eye witness PW-3, Sh. Sunil Kumar (son of the deceased).
4. Statement of the accused was recorded under Section 313 Code of Criminal Procedure wherein he claimed to be innocent and denied all allegations against him. The accused chose not to lead any evidence in his defence.
5. Mr. Rajat Katyal, APP for State contended that the impugned judgment dated 02.11.2017 was based on conjectures and surmises and the same deserves to be set aside. Learned counsel for the State further contended that Ld. Trial Court failed to appreciate the statement of the eye witness PW-3/Sunil Kumar in correct perspective. Learned Counsel further contended that PW-3 (Sunil Kumar) identified the accused person and has consistently deposed against the Respondent. Mr. Katyal further contended that the testimonies of PW-3 (Sunil Kumar) and PW-2 (Ct. Vinod Kumar) are corroborative which establish the case of the prosecution.

Learned Counsel for the State relied upon the Inspection report of the offending vehicle and argued that the damages on offending vehicle established the case of the prosecution.

6. I have heard the learned counsel for the State and perused the material on record.
7. At the outset, before delving into merits of the submissions made by learned counsel for the parties, I find it appropriate to discuss the relevant Section involved in the instant case. Section 279 IPC deals with rash and negligent driving, which reads as under:

"S. 279. Rash driving or riding on a public way- Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both"

8. To constitute an offence under Section 279 IPC, it must be shown that the person was driving the vehicle in a rash or negligent manner because criminal negligence or criminal rashness is an important element for the offence under Section 279 IPC.
9. Section 304A reads as under:

"304A. Causing death by negligence— Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

10. In a road accident case, to convict a person for the offence punishable under Section 304-A IPC, the prosecution is required to bring on record the basic requirement of the said Section i.e. "Rash or Negligent Act" with following conditions:

- 1) there must be death of the person in question;
- 2) that the accused must have caused such death;
and
- 3) that such act of the accused was rash or negligent and that it did not amount to culpable homicide.

11. In ***Rathnashalvan vs. State of Karnataka : AIR 2007 SC 1064***, the Apex Court observed that:

“5. Section 304A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to

culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

6. As noted above, "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.

12. Section 304A exclusively deals with unintentional death caused by doing any rash or negligent act by the offender. The applicability of this Section is limited to rash or negligent acts which cause death but fall short on culpable homicide amounting to murder or culpable homicide not amounting to murder. To bring an offence within the ambit of Section 304A, the prosecution is required to

bring on record that the death was caused due to rash and negligent act of the accused.

13. Rashness consists in hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences, whereas criminal negligence on the other hand, is the gross and culpable neglect or the failure to exercise the reasonable and proper care. The distinction has been very aptly pointed out by Holloway J. in these words:

“Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The immutability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had, he would have had the consciousness. The immutability arises from the negligence of the civic duty of circumspection”

14. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it may cause injury but done without any intention to cause injury that it would probably cause injury. The criminality lies in such an act or indifference to the consequences.

15. The question whether the conduct of the accused amounted to culpable rashness or negligence directly depends on the question as to whether what was the amount of care and circumspection was taken by him in facts and circumstances of the case. It is necessary to avoid being influenced by the prejudice arising out of the loss of a life which is a dominant factor in cases of accident.
16. Returning to the facts of the present case, the moot question which is to be decided is whether the death was caused due to rashness and negligence of the Respondent/accused person. To ascertain the death, it is relevant to examine the testimonies of material witnesses i.e. PW-3 (son of deceased/victim) and PW-13 (Investigating Officer) and PW-2 (Ct. Vinod Kumar). PW-3 (son of deceased) in his examination in chief deposed as under:

“On 04.04.2004, I was coming from Ajmeri gate and going towards Minto Road to supply ice. At about 04:00 PM, we reached Kamla Market, bus stand and a truck TATA 709 bearing registration number HR 38C 2513 came from the back side. The truck driver was driving in rash and negligent manner by driving at high speed and hit ourrickshaw. My father was pulling the rickshaw. He fell down on the road and the front rightside wheel of the truck crushed the legs of my father. Police came at spot as PS was nearby and took my father to LNJP hospital. He was arrived at that time. Police prepared site plan at my instance. Photographers were called who took photographs of the spot.”

During cross examination, PW-3 deposed as under:

“It is correct that the rickshaw which was pulled by my father was not broken. Three ice bricks (sillies) were loaded in rickshaw at that time. I did not sustain injuries. I was sitting in rickshaw. The said rickshaw was not overturned. The offending truck was not stopped after hitting the rickshaw. My statement was recorded by the police at police station. I do not remember whether the photographs of the spot were got clicked in my presence or not. When I reached back to the spot at 8 pm, I found the truck and the rickshaw already shifted to the police station. It is correct that public persons were gathered at the spot. No statement of any other public person was recorded in my presence. I precede to the hospital alongwith the police officials and my father. It is correct that my statement is not recorded at the spot. The accused did not go to the hospital....”

17. PW-13 Retired SI Lal Chand (Investigating Officer) during his examination in chief deposed as under:

“On 04.04.2004, I was posted at PS Kamla Market as SI. On that day, alongwith Ct. Vinod reached at spot i.e. JLN Marg near Bus Stand Kamla Market, Delhi. One truck no. HP 38C 2513 and cycle thailey were found in accidental condition at the spot. I left Ct. Vinod at spot and I reached at JPN Hospital as it came to know that injured has already been taken to the hospital. I collected the MLC of injured Ram Varan, who was declared unfit of statement. One eyewitness of the accident

also met me at the hospital. I came at spot alongwith eyewitness Sunil Kumar and driver Ram Chand. I handed over the rukka to Ct. Vinod for registration of FIR.I inspected the site at the instane of complainant Sunil Kumar and prepared site plan Ex. PW13/B, bearing my signature at point A. I seized the truck and cycle thailey vide seizure memo already Ex. PW 2/B and C, bearing my signature at point C respectively. I got clicked the photographs of spot vide photographs already collectively Ex. P12....”.

During cross examination the witness deposed as under:

“The accused Ram chand was the driver on the offending truck at the time of incident. I do not remember whether any damage was caused to cycle thailey by the offending truck due to accident or not.As per my investigation, the offending truck had hit the cycle thailey and injured from behind.....”

18. PW-2 (Ct. Vinod Kumar) during his examination in chief deposed as under-

“On 04.04.2004, I was posted at PS Kamla Market as constable. SI Lal Chand received DD no. 17-A regarding an accident at JLN Marg bus stand, Kamla Market. I alongwith SI Lal Chand went to the spot, where crowd had gathered. Some person from the crowd told me that an accident has occurred and the injured has been taken to JPN hospital. IO left me at spot and went to the hospital. IO came back at the spot and prepared tehrir and handed over to me for registration of

case. I went to PS Kamla market and got the case registered. I handed over the original tehrir and copy of FIR to IO. IO called the photographer who took photographs of the spot....”

During cross examination, PW-2 (Ct. Vinod Kumar) deposed as under:

“...it is correct that the rickshaw and truck were found in accidental condition when we reached at the spot. I do not remember the time when the photographer arrived at the spot. Public persons were present when we reached at the spot. Prior to proceed to the hospital, IO did not record the statement of any public persons at the spot. When the photographs were got clicked, complainant Sunil Kumar was not present at the spot. Rukka was prepared at the spot. At that time, Sunil Kumar was not present at the spot. IO had obtained the signatures of Sunil Kumar on the rukka/complaint in the hospital. IO handed over me the rukka at about 5:40 PM. It is correct that when IO handed over me the rukka complainant was not present. It is correct complainant did not come to the spot at my presence....”

19. From the perusal of the above testimonies, the presence of PW-3 (Son of the victim and eyewitness) at the spot, at the time of commission of crime, appears to be doubtful. PW-3 (Son of the victim and eyewitness) deposed in his examination in chief that ‘At about 04:00 PM, we reached Kamla Market, bus stand and a truck TATA 709 bearing registration number HR 38C 2513 came from

the back side. The truck driver was driving in rash and negligent manner by driving at high speed and hit our rickshaw' during cross examination, PW-3 deposed that 'Three ice bricks (sillies) were loaded in rickshaw at that time. I did not sustain injuries. I was sitting in rickshaw. The said rickshaw was not overturned. The offending truck was not stopped after hitting the rickshaw'. The case of the prosecution is that PW-3 was sitting on the thela with his deceased father and at the time of accident he saved himself by jumping from the rickshaw appears to be improbable, as it has emerged on record that there was no arrangement to seat for two persons in the Rickshaw coupled with the statement of other prosecution witnesses that no damage was caused to the thela pulled by the deceased.

20. Further, PW-3 (Son of the victim and eyewitness) deposed in his examination in chief that 'Photographers were called who took photographs of the spot' to the contrary, in his cross examination, PW-3 deposed that 'I do not remember whether the photographs of the spot were got clicked in my presence or not.' Similarly, PW-2 (Ct. Vinod Kumar) with regard to photographs, in his cross examination deposed that, 'When the photographs were got clicked, complainant Sunil Kumar was not present.'
21. Further, PW-3 (son of the deceased) in his cross examination deposed that 'The accused did not went to the hospital.' to the contrary PW-13 (Investigating Officer) in his examination in chief deposed that 'One eye-witness of the accident namely Sunil Kumar and driver of truck also met me at hospital.'

22. Further, PW-13 (Investigating Officer) in his cross examination mentioned that, 'I came at spot along with eyewitness Sunil Kumar and driver Ram Chand. I handed over rukka to Ct. Vinod for registration of FIR.' To the contrary, PW-2 (Ct. Vinod Kumar) in his cross examination had stated that, 'Rukka was prepared at spot. At that time, Sunil Kumar was not present.' All these witnesses have a different and inconsistent stand in their testimonies which creates a doubt about the presence of PW-3 (Son of the victim and eyewitness) at the spot.
23. At this stage it is imperative to view the medical evidence led by the prosecution. The post-mortem of the deceased was done by PW5/Dr. Mukta Rani. She deposed as under:
- "...on that day, I conducted the post-mortem on dead body of deceased Ram Baran Yadav, s/o Sh. Hub Lal that was brought by SI Lal Chand, PS Kamla Market. After post-mortem examination, I opined the cause of death was due to haemorrhage and shock consequent upon injuries to pelvis produced by Blunt Force Impact. All the injuries were ante-mortem, fresh and could be possible in a road traffic accident..."*
24. Thus, in the opinion of the doctor the injuries on the person of the deceased could not be possible in a road accident. The prosecution also failed to examine public persons who were present at the time of accident. The rukka and the arrest memo also cannot be relied

upon in view of the inconsistent testimonies of the material witnesses i.e. PW-2, PW-3 and PW-13.

25. In the present case, on a cumulative reading and appreciation of the entire evidence on record, I am of the considered view that the evidence on record have been held to be unworthy of acceptance because the same is found to be replete with infirmities. There are considerable inconsistencies and discrepancies in the statement of the witnesses, which consequently makes the version of the prosecution fabricated and unreliable. The prosecution has failed to disclose the true genesis of the crime and establish the charges against the accused punishable under Section 279/304A IPC.
26. It is settled law that while deciding a leave to appeal petition filed by the State, in case two views are possible, the High Court must not grant leave, if the trial court has taken one of the plausible views, in contrast there to in an appeal filed against acquittal. Upon re-appraisal of evidence and relevant material placed on record, in case, the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favours the accused, should be adopted unless the High Court arrives at a definite conclusion that the findings recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective.
27. Having regard to the principles laid down by the Apex Court in the case of *Ghurey Lal vs. State of U.P. reported at 2008(10) SCC 450*, I do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. The learned trial court

has taken a holistic view in the matter and carefully analyzed the evidence of all the witnesses. Accordingly, no ground to interfere with the impugned judgment is made out and leave petition is dismissed.

SANGITA DHINGRA SEHGAL, J

APRIL 10, 2019//afa

